Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Equal Access and	)	CC Docket No. 94-54
Interconnection Obligations	)	RM-8012
Pertaining to Commercial	)	
Mobile Radio Services	)	

To: The Commission

COMMENTS OF CELLULAR SERVICE, INC. AND COMTECH, INC.

Cellular Service, Inc. ("CSI") and ComTech, Inc. ("ComTech") hereby comment on the Commission's inquiry in the above-referenced proceeding with respect to the right of switch-based cellular resellers to interconnect with the facilities of FCC-licensed cellular carriers.

Introduction & Summary

The Commission's Notice of Inquiry raises a host of issues concerning the public interest benefits of interconnection between Commercial Mobile Radio Service ("CMRS") providers and the most appropriate means to implement any such interconnection requirements. That broadranging inquiry will, as a practical matter, require more than one year (and perhaps as long as several years) to be resolved. One issue, however, demands immediate resolution: recognition of the right of switch-based cellular resellers to interconnect with the facilities of FCC-licensed cellular carriers.

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Many cellular resellers, such as CSI and ComTech, are poised to introduce switches which they believe essential to their survival and the provision of better service to the public. Unless the Commission recognizes their right to interconnect now, those public benefits will be lost and the survival of cellular resellers like CSI and ComTech will be jeopardized. For that reason, CSI and ComTech have filed a petition for reconsideration of the Second Report and Order, 9 FCC Rcd 1411 (1994), to the extent that Commission order fails to recognize the right of switch-based cellular resellers to interconnect with the facilities of FCC-licensed cellular carriers.[1] The Commission should grant that petition forthwith to help fulfill the mandate of the Omnibus Budget Reconciliation Act of 1993 to promote competition among CMRS providers.

A grant of CSI and ComTech's petition for reconsideration will not conflict with any issue being pursued in the above-referenced Notice of Inquiry. That inquiry raises issues which concern other services (such as PCS and ESMR) which are nascent or nonexistent. Moreover, any additional policies or regulations adopted through the Notice of Inquiry can be applied to switch-based cellular resellers to the extent warranted.

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[1] Copies of CSI and ComTech's Petition for Reconsideration and their Reply to the Oppositions are annexed hereto as Exhibits 1 and 2, respectively.

Interest of CSI and ComTech

CSI and ComTech each possesses a Certificate of Public Convenience and Necessity from the California Public Utility Commission ("PUC") to provide cellular resale service in California. CSI services more than 25,000 subscribers in Southern California. ComTech provides service to more than 36,000 subscribers in Northern California.

CSI and ComTech have been struggling for more than five (5) years to obtain regulatory authority to install their own switches. The switches would enable CSI and ComTech to reduce their costs (which are largely determined now by the FCC-licensed cellular carriers) and provide enhanced services to subscribers. Use of their own switches, for example, would enable CSI and ComTech to provide their own validation, billing, voice storage and retrieval, and other services now becoming commonplace in the provision of cellular service.[2]

On August 3, 1994, the California PUC issued a decision which confirmed the right of cellular resellers to interconnect their switches with both the FCC-licensed cellular carriers as well as the Local Exchange Carriers ("LECs"). Implementation of that right -- and the enhanced provision of services to the public -- could be frustrated

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[2] For a detailed exposition of the technical parameters of the switch and the benefits it will provide to the public and to cellular resellers, see CSI and ComTech's Petition for Reconsideration of the Second Report and Order, supra.

by the FCC's continued refusal to similarly recognize the right of cellular resellers to interconnect their own switches to the FCC-licensed cellular carriers. Until now, those FCC-licensed cellular carriers have steadfastly refused to negotiate with resellers with respect to the costs and technical parameters of any interconnection. Such discussions are critical to implementation of any right of interconnection for cellular resellers like CSI and ComTech. Accordingly, CSI and ComTech filed a petition for reconsideration of the Second Report and Order to demonstrate that cellular resellers like themselves have a right to interconnect under Section 201 of the Communications Act of 1934 ("Act"), as amended, and established FCC precedent. That petition is pending before the Commission.

The Need to Recognize Cellular Resellers' Right of Interconnection Now

In its Notice of Inquiry, the Commission observed that, "[u]ntil any such generic rules [for interconnection] are adopted, we will, of course, entertain any requests to order interconnection [for switch-based cellular resellers] pursuant to Section 332(c)(1)(B) on a case-by-case basis." Notice at ¶121 n.213. With all due respect, the Commission's offer to entertain such requests is a meaningless gesture.

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To begin with, Section 332(c)(1)(B) merely requires the Commission to respond to all requests for interconnection by CMRS providers, which include cellular resellers. However -- and more importantly -- in that very same paragraph in the Notice the Commission made it clear that it was not yet prepared to recognize the right of a cellular reseller to interconnect its own switch to an FCC-licensed cellular carrier: the Notice expressly seeks "comment on whether it is necessary for our regulations to require CMRS providers to provide interstate interconnection to other CMRS providers, or whether we can anticipate that the CMRS marketplace will develop in such a way that the establishment of interconnection obligations applicable to CMRS providers is not necessary." Notice at ¶121. Hence, any request for interconnection from a cellular reseller -- which would take the form of a complaint under Section 208 of the Act or a declaratory ruling request under Section 1.2 of the Commission's rules -- would necessarily lie dormant until the Commission issues a statement recognizing that right. In that context, the filing of a complaint or request for declaratory ruling now would invariably prove to be a cathartic act.

There is no reason why the Commission cannot now recognize the federal right of cellular resellers to interconnect their own switches with FCC-licensed cellular carriers. Indeed, such recognition is mandated by law.

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The Notice acknowledges that rights of interconnection for CMRS providers, like all common carriers, are governed by Section 201 of the Act. Notice at ¶113. The Notice then proceeds to inquire whether any interconnection obligation should be imposed on all CMRS providers (including cellular carriers) in light of the Commission's view "that CMRS providers do not have control over bottleneck facilities." Notice at ¶124 (footnote omitted). From that faulty premise, the Commission raises a variety of factual questions which will presumably result in a resolution in the distant future.

Contrary to the Notice's assumption, there is nothing in Section 201, its history, or precedent which dictates that any and all interconnection obligations are premised on a connecting carrier having bottleneck facilities. To be sure, interconnection has been ordered in situations where the connecting carrier does have bottleneck facilities. But nothing in the language of the Act or Commission precedent demands that control of bottleneck facilities be present in any and every situation. Quite the contrary. The Commission has already concluded that the standard of analysis for interconnection under Section 201 is whether the requested interconnection is privately beneficial without being publicly detrimental. AT&T, 60 FCC2d 939 (1976). See CSI and ComTech Petition for Reconsideration at 5-10.

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Cellular resellers would have a right to interconnect to cellular carriers even if the cellular carriers' control of bottleneck facilities were a legal prerequisite. As explained in greater detail in CSI and ComTech's Petition for Reconsideration, cellular carriers do have control over bottleneck facilities. See Petition for Reconsideration at 7-10. In the absence of interconnection, CSI, ComTech, and other switch-based resellers will be precluded from providing the enhanced services that they would like to provide and that the consuming public is demanding with greater frequency. For its part, the California PUC recognized the cellular resellers' right to interconnect with the FCC-licensed cellular carriers precisely because the two FCC-licensed cellular carriers have bottleneck control over radio transmission facilities for mobile communications. Relevant excerpts of the California PUC decision are annexed hereto as Exhibit 3.

It is, to be blunt, myopic of the Commission to inquire whether the CMRS marketplace is sufficiently competitive to make any interconnection right for cellular resellers unnecessary. Until the issuance of the California PUC decision, the FCC-licensed cellular carriers would not even discuss the subject of interconnection with cellular resellers. One need not engage in academic debate as to whether the common front posed by the cellular carriers represents any form of cooperation between them on this

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issue. The plain and simple fact is that each FCC-licensed cellular carrier has a clear incentive to avoid any interconnection with cellular resellers which, for the time being, represent the only actual competition to the FCC-licensed duopoly.[3]

The Commission's refusal to recognize the cellular resellers' right of interconnection is not only inconsistent with Section 201 and existing precedent; that refusal is equally inconsistent with the public interest. The Commission itself has recognized "that a strong resale market for cellular service fosters competition." Notice at ¶138, citing Cellular Resale Order, 7 FCC Rcd 4006, 4007 (1992). A grant of CSI and ComTech's Petition for Reconsideration of the Second Report and Order and the recognition of cellular resellers' right to interconnect will only further the competition provided by cellular resale.

There is no countervailing public or private detriment. The Commission should ask itself a very fundamental and basic question: What public interest will be adversely affected if cellular resellers are given the opportunity --

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[3] Although it has been acquiring SMR facilities and has initiated some limited service in California, Nextel Communications, Inc. ("Nextel") hardly poses any competition to the cellular carriers. Nor is it clear when Nextel will be sufficiently developed to begin to offer meaningful competition. There is no other mobile communications service which provides any competition to the cellular carriers.

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subject to final Commission review of any cellular carrier complaints of technical incompatibility or undue cost -- to spend millions of dollars for the acquisition and installation of switches to reduce their costs and improve service to the public? Recognition of a right to interconnection, as requested by CSI and ComTech, will do nothing more than impose an obligation on the cellular carriers to negotiate an interconnection arrangement in good faith with cellular resellers.

In short, recognition of the cellular resellers' right to interconnection does not mean that any and every request for interconnection by a cellular reseller should be accepted by the cellular carriers or enforced by the Commission. Recognition of the right, however, will mean that, in the event of a failed negotiation, any complaint will focus on the technical parameters and costs of the interconnection -- and thus whether it is reasonable and in the public interest -- rather than whether the cellular carriers have an obligation to discuss the subject with the cellular resellers.

Nor should there be any concern that recognition of the cellular resellers' right to interconnect with the FCC-licensed cellular carriers will conflict with the issues being pursued in the Notice of Inquiry in the above-referenced docket. That inquiry poses a variety of questions which go far beyond the right of cellular

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resellers to interconnect with the FCC-licensed cellular carriers. Thus, recognition of the cellular resellers' right to interconnect will not in any way pre-determine whether CMRS-to-CMRS interconnection should be governed by tariff or good faith negotiations, whether or how principles of mutual compensation should be applied, or whether resale obligations should be imposed on services other than cellular.

It should also be emphasized that any policies and rules adopted pursuant to the Notice of Inquiry can, as the Commission deems appropriate, be applied to cellular resellers.[4] To be sure, recognition of a cellular reseller's right to interconnect with FCC-licensed cellular carriers may impact the Commission's judgment whether to allow interconnection between resellers of other CMRS providers' service. But that impact will impose no obligation beyond the Commission's existing duty to account for precedent and explain any departures.[5] See generally

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[4] As an example, CSI and ComTech believe that principles of mutual compensation should be applied to switch-based cellular resellers as well as to other interconnection situations involving CMRS providers. Mutual compensation rests on the basic notion that one carrier should compensate another carrier for the use of that second carrier's facilities in the completion of a transmission. To the extent a cellular reseller's transmission facilities are used by a cellular carrier or LEC to complete a call, the reseller should be compensated. However, resolution of that issue can await the outcome of the Notice of Inquiry.

[5] By the time PCS and ESMR mature and provide meaningful competition to cellular, the marketplace will be (continued...)

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CBS v. FCC, 454 F.2d 1018, 1026 (D.C. Cir. 1971) (resolution of political broadcasting complaint requires Commission to recognize and account for existing precedent); Greater Boston Television, Inc. v. FCC, 444 F.2d 841, 851-52 (D.C. Cir. 1970), cert. denied, 403 U.S. 923 (1971) (in adopting any new policy, the Commission must account for and reasonably explain any departure from prior policy).

The Commission should not regard cellular resale interconnection as a matter that can await resolution with the other issues raised in the Notice of Inquiry. As the California PUC found, the market share commanded by cellular resale is dropping rapidly. In the San Francisco and Los Angeles markets, for example, the cellular resellers' market share dropped from 35% in 1989 to 20% in 1993. In the absence of interconnection -- and the corresponding ability to reduce costs and improve service -- cellular resellers' survival will be in jeopardy. The loss of cellular resale will no doubt be celebrated by the cellular carriers but will do little for the state of competition and the public interest which the Commission is obligated to promote.

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[5](...continued)
very different from what it is today and may justify adjustments in FCC policy.

Conclusion

WHEREFORE, in view of the foregoing, it is respectfully requested that the Commission grant CSI and ComTech's Petition for Reconsideration of the Second Report and Order and recognize the right of cellular resellers to interconnect with the FCC-licensed cellular carriers pursuant to good faith negotiations and subject to ultimate review by the Commission.

Respectfully submitted,

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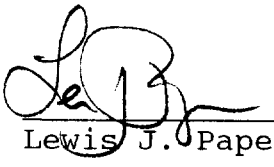
By: 
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EXHIBIT 1

Corrected Version

Before the
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Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections 3(n) and 332 of the Communications Act	)	GN Docket No. 93-252
	)	
	)	
Regulatory treatment of Mobile Services	)	

To: The Commission

PETITION FOR RECONSIDERATION

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Summary

Cellular Service, Inc. ("CSI") and ComTech, Inc. ("ComTech") resell cellular service in California. CSI and ComTech request that the Commission reconsider its Second Report and Order to (1) recognize the right of cellular resellers to interconnect with the facilities of the FCC-licensed cellular carriers and (2) to require that that interconnection be made available under reasonable terms and conditions.

CSI, ComTech, and similarly-situated cellular resellers do not have switches or other facilities of their own. For that reason, CSI, ComTech and other cellular resellers are limited in the services they can provide. CSI and ComTech, as well as other cellular resellers, have developed plans for switches which will enable resellers to provide current services in a more cost-efficient manner and to introduce new services not currently available to cellular subscribers. Installation of the switches and other facilities, however, requires interconnection with the Mobile Telephone Switching Office ("MTSO") of the FCC-licensed cellular carriers.

Section 201 of the Communications Act of 1934 governs the right of all common carriers to interconnection. The Second Report and Order acknowledged that cellular resellers like CSI and ComTech are common carriers. CSI and ComTech also satisfy the second requirement of Section 201 for interconnection: their proposed service is necessary and desirable in the public interest. In making this latter determination, the Commission

need only find that the interconnection will serve the carrier's need without causing any harm to the connecting carrier's operations. Interconnection is plainly needed to facilitate service by CSI, ComTech and other cellular resellers; and no reseller is proposing to install any switch or take any other action which will cause any harm to a connecting carrier.

The Commission nonetheless decided to defer the question of whether cellular resellers and other providers of Commercial Mobile Radio Service ("CMRS") have a right to interconnect with other CMRS providers (such as FCC-licensed cellular carriers). That deferral cannot be squared with the Communications Act of 1934, the Omnibus Budget Reconciliation Act of 1993, the Commission's prior pronouncements, or the public interest. The Commission has already acknowledged that the cellular market is not competitive. Deferral of the interconnection issue for cellular resellers will facilitate the FCC-licensed cellular carriers' dominance of the mobile communications market since it is not clear when other CMRS providers (such as those offering Enhanced Specialized Mobile Radio Service and Personal Communications Services) will materialize. Both the Congress' and the Commission's avowed interest in promoting competition requires that cellular resellers' right to interconnection be recognized now.

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In the Matter of	)	
	)	
Implementation of Sections 3(n) and 332 of the Communications Act	)	GN Docket No. 93-252
	)	
Regulatory treatment of Mobile Services	)	

To: The Commission

PETITION FOR RECONSIDERATION

Cellular Service, Inc. ("CSI") and ComTech, Inc. ("ComTech"), acting pursuant to Section 1.429 of the Commission's rules, hereby petition for reconsideration of the Second Report and Order, 9 FCC Rcd 1411 (1994), to request that the Commission require (1) that all FCC-licensed cellular carriers provide interconnection to resellers of cellular service who propose to install their own switches and other facilities and (2) that the terms and conditions for such interconnection conform with existing policies and the principles adopted in the Second Report and Order to govern interconnection by providers of commercial mobile radio services ("CMRS") with local exchange carriers ("LECs").

Introduction

CSI and ComTech resell cellular service in California. The instant petition for reconsideration concerns the need of CSI, ComTech, and other similarly-situated cellular resellers to

interconnect their own switches with FCC-licensed cellular carriers in order to preserve and enhance resale cellular service to the public. Without immediate recognition of the right of cellular resellers to interconnect under reasonable terms and conditions, the survival of cellular resellers -- in many markets the only present competitors of the FCC-licensed carriers -- will be in serious jeopardy. The instant petition for reconsideration is thus designed to advance the avowed goals of Congress and the Commission in promoting competition in the provision of mobile communications services.

The Second Report and Order acknowledged that cellular resellers are CMRS providers subject to FCC jurisdiction. At the same time, the Commission deferred the question whether cellular resellers, or any CMRS providers, are entitled to interconnection with other CMRS providers. Instead, the Commission decided to pursue that question in a notice of inquiry to be issued at a later date.

However reasonable the Commission's deferral may be with respect to Personal Communications Services ("PCS"), Enhanced Specialized Mobile Radio ("ESMR") and other new CMRS providers -- which are either non-existent or in nascent stages of development -- the Commission's action cannot be justified with respect to cellular resellers. Indeed, the Commission's refusal to order interconnection for cellular resellers is inconsistent with the Communications Act of 1934, the Omnibus Budget Reconciliation Act of 1993, the Commission's prior

pronouncements, and the public interest. Reconsideration is therefore required.[1]

I. Background

CSI was founded as a cellular resale business in 1983. CSI possesses a certificate of public convenience from the California Public Utility Commission ("PUC") and has approximately 25,000 subscribers in southern California.

ComTech also has a certificate of public convenience from the California PUC. ComTech was founded in 1984 and currently provides cellular resale service to approximately 36,000 subscribers in northern California.

CSI and ComTech resell service which is obtained from FCC-licensed cellular carriers on a wholesale basis. Since they do not have their own switching facilities in place, CSI and ComTech are limited in the services they can provide to their respective subscribers.

Both CSI and ComTech have plans to install their own switches to interconnect with the LECs and the Mobile Telephone Switching Office ("MTSO") of the FCC-licensed cellular carriers. Use of the switches would enable CSI and ComTech to assume responsibility for services currently provided by the FCC-

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[1]It should be emphasized that the instant petition does not address the rights or needs of interconnection for other CMRS providers (such as those who intend to offer PCS) to CMRS providers. Although the analysis in the instant petition may be relevant to disposition of those latter issues, the focus of the instant petition is the need of cellular resellers to interconnect with FCC-licensed cellular carriers.

licensed cellular carriers and to introduce new services not currently available to any cellular subscriber.

The reseller switch would be installed between the MTSO and the LEC's facilities. The reseller switch and its associated data bank would administer the reseller's own NXX codes, record and validate all pertinent information related to a subscriber's calls, perform all functions necessary to route calls through local and interexchange networks (and, in the case of incoming calls, the MTSO), and provide data required to generate subscriber bills. Use of the switch would also enable CSI and ComTech to introduce innovative services, such as Incoming Call Screening, Distinctive Call Signaling, Priority Call Waiting, and Custom Directory Service. A description of the services that could be provided over a cellular reseller's switch are described with greater particularity in the annexed testimony of Ralph L. Widmar, a telecommunications management consultant who testified on behalf of CSI before the California PUC.

CSI and ComTech have been developing plans for installation of a switch for many years and are now poised to install the switch upon recognition of their legal right to do so. Other cellular resellers around the country are similarly eager to provide facilities-based service. If given the right to interconnect, CSI, ComTech, and other similarly-situated cellular resellers will be able to make the benefits of their facilities-based service available to the public and improve the level of competition in the mobile communications market.

II. Reconsideration Required

A. Cellular Resellers are Entitled to Interconnection with FCC-Licensed Cellular Carriers

Congress recognized the importance of interconnection for CMRS providers when it enacted the Omnibus Budget Reconciliation Act of 1993 (the "Budget Act"), P.L. 103-66 (August 10, 1993). The Report of the House Budget Committee, for example, states that "[t]he Committee considers the right to interconnect an important one which the Commission shall seek to promote, since interconnection serves to enhance competition and advance a seamless national network." House Report No. 103-111, 103 Cong., 1st Session 261 (May 25, 1993). The new Section 332(c)(1)(B) added by the Budget Act further provides that, "[u]pon reasonable request of any person providing commercial mobile service, the Commission shall order a common carrier to establish physical connections with such service pursuant to the provisions of Section 201 of this Act." However, that new provision does not change the Commission's authority to order interconnection under Section 201: "Except to the extent that the Commission is required to respond to such a request [for interconnection], this subparagraph shall not be construed as a limitation or expansion of the Commission's authority to order interconnection pursuant to this Act." 47 U.S.C. §332(c)(1)(B). Therefore, the interconnection rights of any CMRS provider -- including cellular resellers -- must be determined under Section 201 of the Communications Act of 1934, 47 U.S.C. §201.

Section 201 states, in pertinent part, as follows:

> (a) It shall be the duty of every common carrier engaged in interstate or foreign communication by wire or radio to furnish such communication service upon reasonable request therefor; and, in accordance with the orders of the Commission, in cases where the Commission, after opportunity for hearing, finds such action necessary or desirable in the public interest, to establish physical connections with other carriers, to establish through routes and charges applicable thereto in the divisions of such charges, and to establish and provide facilities and regulations for operating such through routes.
>
> (b) All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful. . .

47 U.S.C. §201 (emphasis added). Section 201 thus establishes two basic criteria which must be satisfied to justify a Commission order for interconnection: (1) the request must be from a common carrier; and (2) the request must be "necessary or desirable" to serve the public interest.

The Commission has already determined that cellular resellers satisfy the first requirement. The Second Report and Order concludes that "mobile resale service is included within the general category of mobile services as defined by Section 3(n) and for purposes of regulation under Section 332 . . ." Second Report and Order, 9 FCC Rcd at 1425. Cellular resellers also satisfy the second requirement to justify interconnection under Section 201: interconnection is necessary to provide the services contemplated by cellular resellers like

CSI and ComTech and, in any event, is "desirable" to serve the public interest. This latter point warrants elaboration.

As explained above, interconnection is needed to facilitate and improve the cellular resale services offered to subscribers. The reseller switch will not only enable cellular resellers like CSI and ComTech to provide services on a more cost-efficient basis (and therefore at lower cost for the subscriber); of equal, if not greater importance, use of a switch will enable a cellular reseller to offer innovative services in a cost-effective manner.

There is no reasonable basis upon which the Commission could conclude that interconnection for cellular resale does not satisfy the requirements of Section 201. It is settled that a telephone customer has a right "reasonably to use his telephone in ways which are privately beneficial without being publicly detrimental." Hush-A-Phone v. United States, 238 F.2d 266, 269 (D.C. Cir. 1956). Accord Carterfone, 13 FCC2d 420, 424, recon. denied, 14 FCC2d 571 (1968) (subscriber is free to connect devices to the telephone system which are of value to the customer as long as the connection does not adversely affect the telephone company's operations). Although those cases focused on Section 201(b), the Commission has employed that same standard in deciding the scope of a common carrier's right of interconnection under Section 201(a). AT&T, 60 FCC2d 939 (1976).

In AT&T, the Commission concluded that AT&T could not reasonably refuse to provide interconnection to another carrier for private line service. In reaching that conclusion, the

Commission relied on three principles drawn from Hush-A-Phone and Carterfone:

> First, a customer must not be unreasonably denied the right to use the telephone system to meet his needs. Second, the "public detriment" to be avoided in cases of interconnection is to be measured in terms of technical harm to the telephone system or economic impact which adversely affects the ability of a carrier adequately to serve the public, or both. Third, a tariff restriction on interconnection purporting to protect against technical or economic harm is unreasonable if it assumes a priori that such harm will result.

60 FCC2d at 943. In outlining the foregoing principles, the Commission acknowledged that Hush-A-Phone and Carterfone applied Section 201(b) and that interconnection rights are governed by Section 201(a). The Commission observed, however, that the distinction was one without a difference:

> The rationale of the Carterfone line of cases turns on whether a particular tariff restriction unduly hampers the free exercise of customer choice or, stated another way, the Section 201 obligation of a carrier to provide communications services upon a reasonable request therefor. It makes no difference conceptually that the principles were developed with respect to the connection of customer-supplied devices while here we are concerned essentially with the connection of AT&T private line service to services provided by other carriers. The language of Section 201 of the Act is general and embraces the interconnection of private line services as well as terminal devices. . . .

60 FCC2d at 943. In short, a carrier's request for interconnection is reasonable if the interconnection will serve the carrier's need without harming the connecting carrier's operations.

The reseller switch proposed by CSI, ComTech, and other cellular resellers easily satisfies that standard. The switch